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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1989

LEON S. KAPLAN,

Petitioner,

vs.

COUNTY OF LOS ANGELES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

The Ninth Circuit's decision presents the following fundamental questions concerning the availability of meaningful access to the official ballot of the State of California for certain classes of candidates:

1. Is a requirement that a candidate for nonpartisan judicial office pay an $80,000 printing charge in order to have his/her statement of qualifications placed in the official voter's pamphlet accompanying the official sample ballot violative of the candidate's first and fourteenth amendment rights, where:

(a) the pamphlet is sent to all registered voters in advance of the election;

(b) the pamphlet includes information about the candidate's qualifications under strict state guidelines;

(c) the pamphlet is included with a copy of the actual ballot to be voted upon;

(d) the pamphlet is used directly with absentee ballot procedures; and

(e) the pamphlet is taken directly to the voting booth by many voters to expedite and assist voting.

2. Where access to a voter's pamphlet is required to compete meaningfully in a contested election, may the State restrict such access on the basis of wealth?

QUESTIONS PRESENTED – Continued

3. Under first and fourteenth amendment standards, is a restriction on the use of a state-sponsored public forum (the official voter's pamphlet accompanying the sample ballot) entitled to the same judicial standard accorded to restrictions on "traditional public forums"?

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings below were the petitioner, Leon S. Kaplan, and the respondent, Los Angeles County.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner Leon S. Kaplan (Kaplan) respectfully prays that a writ of certiorari issue to review the January 23, 1990, judgment and opinion of the United States Court of Appeals for the Ninth Circuit, affirming a district court judgment which held that the charging of $80,000 in fees to a candidate for a nonpartisan judicial position for costs associated with publishing the candidate's statements in a voter's pamphlet does not violate the candidate's first and fourteenth amendment rights. The Ninth Circuit's opinion held that the voter's pamphlet constitutes "a limited public forum," and that in creating such a forum, the government "is bound by the same standards as

apply in a traditional public forum." Specifically, however, the court found that the payment requirement contained in the California Elections Code does not violate either the first amendment's free speech provisions nor the fourteenth amendment's equal protection clause.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 894 F.2d 1076, and is reprinted in Appendix A hereto, *infra*. The Findings of Fact and Conclusions of Law of the United States District Court for the Central District of California (Tevrizian, D.J.) is not reported in the Federal Supplement, but is reprinted in Appendix B hereto, *infra*.

JURISDICTION

The Ninth Circuit entered its judgment on January 23, 1990. This Court has jurisdiction to review the judgment by writ of certiorari under 28 U.S.C. section 1254(1).

STATUTES INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV, Section 1:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Elections Code section 10012 (1986). (Text is set out in Appendix C.)

California Constitution, Article 1, section 22:

> Section 22. The right to vote or hold office may not be conditioned by a property qualification.

STATEMENT OF THE CASE

Petitioner Leon S. Kaplan was, at the time this action was originally filed, a Judge of the Municipal Court for the Los Angeles Judicial District and a candidate for the nonpartisan office of Judge of the Los Angeles Superior Court, Office No. 1, an open seat, in the primary election of June 3, 1986. He qualified for the run-off election, and therefore was a candidate for the same office in the November 1986 general election. He was in fact elected, and is presently a Judge of the Superior Court.

In a nonpartisan race, a candidate is entitled by state law to file a brief candidate's statement for inclusion in a

voter's pamphlet that is mailed to the electorate in conjunction with the official sample ballot. When properly filed with the county clerk, the statement is sent, together with a sample ballot, to each of the 3.5 million registered voters of Los Angeles County.

Even though it is prepared by the candidate, a candidate's statement is unlike ordinary campaign literature. It must be submitted on a prescribed form and of a specified length; it may not be modified by the candidate once it is filed; and its contents are made public and subject to court challenge by opposing candidates and the general public well in advance of printing and distribution.

Los Angeles County is not required to, but is authorized to and does, charge candidates for printing a candidate's statement in the voter's pamphlet. California Elections Code section 10012. Candidates are charged a pro rata fee to defray the County's costs of printing the pamphlet (which accompanies the sample ballot) for its 3.5 million voters. For the 1986 election, the County decided to impose a base fee of $52,000 for the primary election and $27,500 for the run-off election for Los Angeles Superior Court. Thus a judicial candidate must have paid $79,500 to have his/her statement included in the voter's pamphlet in both elections. Such payment must be made in advance, unless the candidate is declared indigent by the County. If a candidate is declared indigent, prepayment is not required; however, the County is free to bill the indigent after the election. Petitioner at no time claimed to be indigent, nor did he file an affidavit of indigency.

In a nonpartisan judicial election, it would be nearly impossible for a candidate to gain access to the 3.5 million voters of Los Angeles County in order to inform the electorate of his/her qualifications without submitting a candidate's statement in the voter's pamphlet. Moreover, the candidate's statement is inherently important because of its imprimatur of official approval. As both the California Supreme Court and the Attorney General of California have recognized, the outcome of a nonpartisan election may well turn on the presence of a candidate's statement in the voter's pamphlet.

On February 5, 1986, Petitioner timely filed his Declaration of Intent to run for the office of Judge of the Superior Court, Office Number 1, and paid a filing fee of $771.29. The nominating period opened February 10, 1986, and closed March 7, 1986. Section 10012 of the California Elections Code provides that the County's determination whether to charge a pro rata fee for pamphlet printing must be made before the nominating period opens, *i.e.*, prior to February 10. Petitioner was informed that the figures for the charge for 1986 were not available until February 12, 1986, and that they were not published until February 13. Although he heard indirectly of the amount to be charged on February 17, 1986, Petitioner was not formally advised of the $52,000 printing charge until he picked up his nomination papers on March 3, 1986.

The fees for candidate's statements for the previous three elections had been:

	1980	1982	1984	1986 Estimated*
primary election:	$17,000	$20,000	$22,000	$52,000
run-off election:	$17,000	$20,000	$22,000	$27,500

Petitioner tendered a check for $24,024.53 to the County Registrar based on his calculation of the amount required for the 1984 elections adjusted for inflation. It was refused. On March 7, 1986, Petitioner tendered a personal check for $52,000, without which his statement would not have been accepted. On March 13, 1986, he withdrew his candidate's statement and was later issued a refund.

Petitioner filed suit in district court on March 7, 1986, seeking an injunction against enforcement of the County's advance fee requirement and a declaration that it violated the first amendment. On the same day, Petitioner filed, and the district court denied, an application for a temporary restraining order. On March 12, 1986, the court denied Petitioner's motion for a preliminary injunction. Petitioner forthwith filed a notice of appeal and an emergency motion for an injunction pending appeal.

By memorandum filed March 27, 1986, the court of appeals acted on the motion. *Kaplan v. County of Los Angeles*, No. 86-5709 (9th Cir. March 27, 1986). The court stated that "[o]n the probability of success, Kaplan has

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* The actual costs in 1986 were $48,728.64 for the primary and $23,597.58 for the general election.

demonstrated the existence of serious questions going to the merits." *Id.*, typescript op. at 3. The court explained:

> In light of the decisions of the United States Supreme Court striking filing fee barriers to political candidacies, *see Lubin v. Panish*, 415 U.S. 709 (1974); *Bullock v. Carter*, 405 U.S. 134 (1982), it appears that any substantial financial obstacle to candidacy should receive strict scrutiny. Although state court decisions to date have not found to be unconstitutional the requirement that candidates bear the actual costs of election publicity, *see East Bay Municipal Utility District v. Appellate Department of Superior Court*, 23 Cal. 3d 335 (1979); *Knoll v. Davidson*, 12 Cal. 3d 335 (1974), a governmental offering of space in the voter's pamphlet only to those candidates tendering the cost may violate important constitutional rights.

Kaplan v. County of Los Angeles, No. 86-5709, typescript op. at 3.

The court went on to conclude, however, that because petitioner had already "tendered the required payment to the county[,] [t]he advance tender requirement . . . does not operate as a ban to his candidacy," and therefore that he had not made the requisite showing of irreparable harm for an injunction pending appeal. *Id.* at 3-4. "A renewed tender and suit for refund," the court said, "would provide him with adequate relief." *Id.* at 4. The Ninth Circuit was also concerned that to grant the emergency motion might leave other candidates at a relative disadvantage, and observed that "[t]ender of the payment and later suit for refund" would "avoid" that problem as well. *Id.*

Petitioner did not pay the $52,000 for the primary election; thus, his candidate's statement was not published in the voter's pamphlet. As a result of the primary election, Petitioner qualified for the run-off election, and he was advised by the County of Los Angeles that an advance payment of $27,500 would be required for his candidate's statement, published in English only. Petitioner paid that amount. Adopting the Ninth Circuit's suggestion, he then filed a first amended complaint for declaratory judgment and refund in the district court.

The district court subsequently denied relief for Petitioner. *Kaplan v. County of Los Angeles*, No. 86-1461 DT (C.D. Cal. 1987) (attached as Appendix B). Although the court found that Elections Code section 10012 was enacted "to provide candidates with a reasonable means to communicate with voters and to provide voters with information regarding candidate's qualifications," the court held that "[t]he costs charged pursuant to Elections Code section 10012 are not an abridgment of the First Amendment's freedom of speech protection." The court based its decision in part on the finding that "[t]he sample ballot is not a public forum for free speech activities." *Id.* at 3.

On appeal, Petitioner presented two issues: (i) whether the County's cost recovery system impermissibly infringes his first amendment rights; and (ii) whether the system violates equal protection by distinguishing between candidates on the basis of financial resources.

In its first amendment analysis, the Ninth Circuit described the public forum doctrine and the "now familiar . . . three categories of access according to the type of

public property involved," *Kaplan v. County of Los Angeles*, 894 F.2d 1076, 1079 (9th Cir.) (attached as Appendix A): the traditional public forum, the limited or designated public forum, and the nonpublic forum. The appellate court disagreed with the district court, finding that "the voter's pamphlet constitutes a limited public forum." *Id.* at 1080. This type of forum arises "when the Government has intentionally designated a place or means of communication as a public forum." *Id.* As the court noted, the Government is not required to create or indefinitely maintain a limited public forum. However, "once the government creates the forum, it is bound by the same standards as apply in a traditional public forum." *Id.* That is, a content-neutral restriction "must be shown to serve a significant state interest in a narrowly tailored fashion, and to leave open ample alternative communication channels." *Id.; citing Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984).

However, the Ninth Circuit – contrary to the rule it had just espoused – proceeded to differentiate between the level of scrutiny accorded to restrictions on traditional public fora (such as streets, parks, and sidewalks), and that to be accorded to California's restriction on this limited public forum required to be evaluated under the "same standards." In so doing, the Ninth Circuit rejected the Eleventh Circuit Court of Appeals' holding in *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515 (11th Cir. 1985), *cert. denied*, 475 U.S. 1120 (1986). The *Central Florida* court invalidated a city ordinance which required persons wishing to demonstrate in city streets

and parks to prepay an estimated $1,400 cost for additional police protection. After finding that *Central Florida* dealt with a traditional public forum, the Ninth Circuit distinguished the instant case by declaring it was "dealing with an entirely different type of public forum." 894 F.2d at 1081. Although the Ninth Circuit found that California's restriction on the use of the official ballot pamphlet is required to be evaluated under the "same standards" as a restriction on the use of city streets and parks, and purported to apply the correct standard, it reached the opposite conclusion as did the Eleventh Circuit in *Central Florida*, based on its finding that *Central Florida* dealt with streets and parks. The two conclusions are irreconcilable.

Further, the court found that Elections Code section 10012 passed constitutional muster because "[t]he statute exempts the indigent from cost liability and leaves open a variety of alternative means for a candidate to transmit his statement to voters." *Id.* at 1081. However, as is discussed below, section 10012 does not exempt indigents from cost liability; it merely waives *pre*payment for those found to be indigent by the County. Moreover, the Ninth Circuit's conclusion that ample alternative channels of communication remain is not based on any evidence in the record below, and is unfounded as there exists no comparable alternative means for a nonpartisan judicial candidate to transmit his/her statement to 3.5 million Los Angeles County voters.

The Ninth Circuit rejected Petitioner's equal protection challenge to Elections Code section 10012 by finding that "California's cost recovery system does not affect a candidate's access to the ballot or right to participate in

an election." *Id.* at 1082. The Ninth Circuit refused to recognize the candidate's statement in the voter's pamphlet as a necessary prerequisite to meaningful access to the electorate, as it failed to recognize the state-sponsored voter's pamphlet as an extension of the ballot itself.

REASONS FOR GRANTING THE WRIT

The Eleventh and Ninth Circuits have reached inconsistent conclusions regarding the extent of restrictions which may be placed on the use of public forums in the exercise of political speech. In *Central Florida*, the Eleventh Circuit preserved the right of the people to use a public forum to engage in protected activity without the imposition of unduly restrictive pecuniary burdens. In *Kaplan*, the Ninth Circuit – ignoring the *Perry* rule that, once the government creates a limited public forum, it is entitled to the same protection as are our streets, parks, and sidewalks – has upheld the imposition of extremely substantial cost restrictions which serve as a barrier to one of the most basic democratic rights: a candidate's right to meaningful and equal access to the electorate. In so doing, the Ninth Circuit has departed from the holdings in a line of cases recently handed down by this Honorable Court.

Further, the Ninth Circuit's decision violates the equal protection clause of the fourteenth amendment, by allowing only those candidates with substantial financial resources the use of this public forum. As a practical matter, unless a candidate – or his/her supporters – is extremely wealthy, he/she is foreclosed from a forum

created and made particularly important by the state itself. The Ninth Circuit's decision allows the state to restrict the use of this vital public forum solely on the basis of wealth. This barrier is unconstitutional.

Finally, the decision below precludes access to candidacy except to the very wealthy in specific violation of the California Constitution provision prohibiting candidacy restrictions based on wealth. The California ballot is a paradigm of complexity, including elections for multiple candidates for federal, state, school district, local special districts (346 special districts are in Los Angeles County), board of supervisors, city councils, judicial and other offices, as well as of state propositions and local initiatives. The official ballot statement outlining in advance who is running and their qualifications, together with a sample final ballot (as it will appear in the election booth), is not a mere campaign technique, as the court erroneously implies. Voters are encouraged to, and in fact do, take this document into the voting booth with them. Its content is regulated by the state and has its imprimatur. It has a direct effect in increasingly determinative absentee ballot voting. The pamphlet is in its effect and use an extension of the ballot itself. Judicial candidates, such as Petitioner in Los Angeles County, now have to pay $80,000 from their own pocket to be included. If the incumbent judge is not included in the voter's pamphlet, and a wealthy challenger – or a challenger with wealthy supporters – buys a place in that document, the incumbent is eliminated. The incumbent is compelled to pay his/her entire annual salary in order to obtain access to what is effectively part and parcel of the modern ballot.

I.

A DECISION FROM THIS COURT IS ESSENTIAL TO RESOLVE A CONFLICT BETWEEN THE CIRCUITS REGARDING THE EXTENT OF PERMISSIBLE RESTRICTIONS ON THE USE OF A PUBLIC FORUM

The Ninth Circuit correctly identified the voter's pamphlet as constituting a public forum. Although the Ninth Circuit qualified the pamphlet as being a "limited public forum," this differentiation refers only to its origin and scope and not to its status, importance, or the standard of judicial review which attends its attempted restriction. In the words of this Court, once the State has opened public property for use by the public as a place for expressive activity, "it is bound by the *same standards* as apply in a traditional public forum." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983) (emphasis added); *Widmar v. Vincent*, 454 U.S. 263 (1981). In other words, once a public forum is recognized, it is to be given the same level of protection as any other recognized public forum. That is, a content-neutral restriction "must be shown to serve a significant state interest in a narrowly tailored fashion, and to leave open ample alternative communication channels." *Kaplan*, 894 F.2d at 1080; *citing Perry*, 460 U.S. at 45 (1983); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 104 S.Ct. 3065, 3068-69, 82 L.Ed.2d 221 (1984). However, although acknowledging that the voter's pamphlet constitutes a public forum, the Ninth Circuit attempts to diminish the document's significance by holding that it was "created for the specific purpose of communication," and therefore is not deserving of the protections accorded a traditional public forum. What the Ninth Circuit offered with one

hand – the designation of the pamphlet as a public forum deserving of the same treatment accorded the traditional public forum, it took away with the other by creating a fictional and vague distinction between "different type[s] of public forum[s]." 894 F.2d at 1081. The result is a standard which conflicts with the rule in *Perry*, and which lacks bright-line features and invites confusion.

According to the Supreme Court in *Perry*, "[i]n a public forum, by definition, all parties have a constitutional right of access. . . . When speakers and subjects are similarly situated, the State may not pick and choose." 460 U.S. at 54. Further, "[t]he Constitution forbids a State to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place." 460 U.S. at 46; *see also Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981). The Ninth Circuit's creation of a distinction between the public forum created by the State of California, and other public forums, is inconsistent with the line of cases handed down by this Court. Indeed, if one were to distinguish between these two types of forums, one would hope that access and equal protection standards would be more strictly applied to the state-created forum – not relaxed under a schemata of vague deference.

Time, place and manner restrictions on any recognized public forum are properly scrutinized using the same standard. But the Ninth Circuit's decision upholding the cost recovery system directly conflicts with this proposition and the holding advancing it by the Eleventh Circuit in *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515 (11th Cir. 1985), *cert. denied*, 475 U.S. 1120

(1985). In *Central Florida*, the challenged ordinance required organizations staging public rallies to pay a fee based on the estimated cost of providing the additional police protection needed for the event. It was challenged by a group required to deposit $1,435.74 before it could hold its rally. The Eleventh Circuit struck down the fee, interpreting a binding Supreme Court decision "as authorizing only nominal charges for the use" of a public forum "to further First Amendment activities." *Id.* at 1523, interpreting *Cox v. New Hampshire*, 312 U.S. 569, 761 S.Ct. 762, 85 L.Ed. 1049 (1941). In the words of the Eleventh Circuit, "[a]n ordinance which charges more than a nominal fee for using public forums for public issue speech, violates the First Amendment." *Central Florida*, 774 F.2d at 1523. Thus, the Ninth Circuit's statement that "[w]e find nothing in *Cox* that requires that all charges for any public forum be limited to 'nominal' charges," *Kaplan*, 894 F.2d at 696, directly conflicts with the Eleventh Circuit's interpretation of *Cox*.

Moreover, the California statute is not narrowly tailored, for it broadly applies without exception to indigent persons wishing to run for judicial office, but unable to advance the exorbitant fee estimated by the County. The Eleventh Circuit recognized the effect that restrictive fees have on indigent persons who wish to exercise their first amendment rights, but are denied an equal opportunity to be heard based on their financial status. Interestingly, the Eleventh Circuit was more concerned with the chilling effects of a $1,400 fee than the Ninth Circuit is with an $80,000 fee. And it countenances the fee in a forum of particular political significance, and with wider equal protection and access implications.

The limited attention paid by the Ninth Circuit to this issue is nothing more than a misstatement of law. The court states that "[t]he statute exempts the indigent from cost liability. . . ." The statute does nothing of the kind. Elections Code section 10012.3 states that if a candidate is declared indigent by the County, his/her candidate statement will be included in the voter's pamphlet without *prepayment*. The statute continues: "[n]othing in this section shall prohibit the [County] from billing the candidate his or her actual pro rata share of the cost after the election." Therefore, even a candidate declared by the County to be indigent will be required, at some point in time, to pay this exorbitant fee.

Finally, there is no evidence in the record to support the court's conclusion that the statute "leaves open a variety of alternative means for a candidate to transmit his statement to the voters." Without exposure in the voter's pamphlet, reaching 3.5 million voters throughout the vast County of Los Angeles would be nearly impossible. (*See* discussion in Section II, *infra*). Additionally, the fundraising and campaigning abilities of incumbent judges – as was Judge Kaplan – are severely restricted by Canon 7 of the California Code of Judicial Conduct.

II.

ACCESS TO THE VOTER'S PAMPHLET MUST BE AVAILABLE TO ALL CANDIDATES ON AN EQUAL BASIS REGARDLESS OF FINANCIAL RESOURCES OR PROPERTY QUALIFICATIONS

In denying relief for Petitioner, the Ninth Circuit created a barrier to the election process which prevents candidates lacking substantial financial resources from

gaining equal meaningful access to the California ballot and to the California electorate.

The election at issue here involves a candidacy before a voting population of 3.5 million voters. It involves enormously high media costs, as well as a population sprawled geographically across a large territory. It involves a nonpartisan race; political party funds are not available to the candidates. It is a contest for judicial office, where heavy private campaign contributions are not and should not be encouraged as a matter of public policy for reasons relevant to the integrity of the judiciary.

Because of the magnitude of every election in California in general, and in Los Angeles County in particular, the importance of the voter's pamphlet, which accompanies the sample ballot sent to each registered voter, cannot be overemphasized. Voters are now confronted with hundreds of offices: United States Senate and House of Representatives, President and Vice-President, six statewide officers, Board of Equalization, county boards of supervisors, city councils, school district boards and boards governing dozens of special districts, from water boards to mosquito abatement. Within Los Angeles County are 346 special districts. There are state propositions and local initiatives. Judicial officers are required to stand for re-election every four years at municipal, superior, appellate, and supreme court levels. Voters understandably review the pamphlet, mark their choices on the sample ballot, and carry both items into the voting booth, where they simply transfer their pre-selected choices onto the official ballot. Indeed, voters are encouraged to pre-

select their choices in order to minimize time spent in the voting booths.

The reality in California is that the voter's pamphlet is merely an extension of the official ballot. In the words of the California Supreme Court,

> the voter's pamphlet, which accompanies the sample ballot, purports to be an authoritative document that appears to give an imprimatur of official approval to statements of qualifications included therein. It is quite likely that this document would carry greater weight in the minds of the voters than normal campaign literature and that candidates who do not have their statements of qualifications in it would appear to be lacking in official sanction. In short, it seems likely that candidates who have their statements of qualifications included in the voter's pamphlet have a clear advantage over candidates who do not.

Knoll v. Davidson, 12 Cal. 3d 335, 352 (1974). California's Attorney General expounded on this language, stating:

> because of this 'imprimatur of official approval' and the decisive role, in many instances, it can play in voter evaluation of candidates, the statement of qualification appears to clearly fall within the class of election materials provided the voter which Congress intended, under specified circumstances, to be available to language minority members in order that they too can fully participate in the electoral process.

59 Attorney General Opinion 309, 312 (1976).

Further, the import of the candidate's statement in the voter's pamphlet is illustrated by California Elections Code section 10013.5, which provides that the voter's

pamphlet be posted for public examination. The section provides that:

> not less than ten calendar days before the clerk submits the official voter's pamphlet referred to in Section 10012 for printing, the clerk shall make a copy of the voter's pamphlet available for public examination in the clerk's office. Any person may obtain a copy of the voter's pamphlet. During the 10-calendar-day examination period provided by this Section, any voter of the jurisdiction in which the election is being held, or the clerk, himself, or herself, may seek a writ of mandate or an injunction requiring any or all of the material in voter's pamphlet to be amended or deleted. A peremptory writ of mandate or an injunction shall issue only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter, and that issuance of the writ or injunction will not substantially interfere with the printing. . . .

Finally, local elections in California are increasingly decided by absentee ballots submitted in advance and based directly on contemporaneous use of this official pamphlet. The Ninth Circuit's statement that "California's cost recovery system does not affect a candidate's access to the ballot or right to participate in an election" (894 F.2d at 1082) is, for the reasons articulated above, out of touch with the reality of the California election process. A candidate unable to insert a statement in the voter's pamphlet is denied access to the only meaningful public forum in the election process – indeed, to what has become an extension of the ballot itself.

It is reasonably inferred that information about candidates for nonpartisan elective offices (and indeed, for

many voters, the only piece of information about the candidates) will be the official mailing of the County of Los Angeles prior to the election. There is no alternative equivalent available to any candidate. This official statement, as a practical matter, is not a "campaign tool" – it is the campaign. The reality of campaign costs, 3.5 million voters, and the significance of the candidate's statements compels the inevitable judgment that denial of access to the election statement is a denial of candidacy. The fact that a name may be on the ballot itself is little more significant as a candidacy right than the theoretical right to "write in" the name of someone not allowed to file for office. Candidacy is more than a name on a ballot; it is a name representing a person with qualifications, characteristics, and views. A meaningful election is something more than the random selection of names on a list.

It must be pointed out that access to the voter's pamphlet, a document recognized as an official document by millions of Californians, is denied to a certain and identifiable class of individuals. Candidates with substantial financial resources obviously have access to the pamphlet. However, those potential candidates who lack the financial resources to pay the County's bill are unable to participate in a public forum created specifically for their use. The purpose of the candidate's statement is "to afford citizens aspiring to nonpartisan elective office, an inexpensive method of partially escaping from complete anonymity." *Loza v. Panish*, 102 Cal. App. 3d 821, 826, 162 Cal. Rptr. 596, 599 (1980) (Compton, J., concurring). Regrettably, the Ninth Circuit's decision has effectively eliminated this opportunity for a large majority of Californians. While the affluent may be expected to have

greater access to commercial media and other such campaign devices, they should not have control as well of the one officially certified, supposedly objective source of election information.

Therefore, the barrier placed between these potential candidates and unique and meaningful access to the electorate is based solely on the financial resources and the property qualifications of those candidates.

The likelihood of many capable candidates falling into this category is substantial. Petitioner was a candidate for a job promising a yearly salary of under $80,000 – less than the County wanted him to pay in order to meaningfully compete for the position. Petitioner, like the majority of Californians, was unable to pay an $80,000 bill. And the $80,000 cost will only increase further over time. It has already more than doubled over the past four years. It currently stands at a sum greater than the total salary for the position subject to that election.

Therefore, access to the voter's pamphlet, and consequentially meaningful and equal access to the ballot, is based solely upon property qualification under Elections Code section 10012. Such a system clearly violates the federal equal protection provisions. Such a system also violates Article 1, Section 22 of the California Constitution, which plainly reads, "[t]he right to vote or hold office may not be conditioned by a property qualification," and therefore is not an acceptable basis for meaningful candidacy in our constitutional framework.

CONCLUSION

The Ninth Circuit's decision that an $80,000 fee for participating in a public forum created by the Government for political expressive activity relating to the all-important election process cannot be reconciled with present law relating to first amendment free speech considerations or fourteenth amendment equal protection provisions. Petitioner respectfully submits that a writ of certiorari issue to the Ninth Circuit and that its decision affirming the district court decision be reversed.

Respectfully submitted,

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APPENDIX A

Leon S. KAPLAN, Plaintiff-Appellant,

v.

COUNTY OF LOS ANGELES,
Defendant-Appellee.

No. 87-6646.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted May 5, 1988.

Decided Jan. 23, 1990.

Robert C. Moest and David Grosz, Fleishman, Fisher & Moest, Los Angeles, Cal., for plaintiff-appellant.

Phillip H. Hickok, Principal Deputy County Counsel, Sp. Services Div., County of Los Angeles, Los Angeles, Cal., for defendant-appellee.

Robert C. Fellmeth, San Diego, Cal. Linda Sullivan, ACLU Foundation of Southern California, Los Angeles, Cal., for the amici.

Appeal from the United States District Court for the Central District of California.

Before HUG, POOLE and THOMPSON, Circuit Judges.

HUG, Circuit Judge:

Judge Leon S. Kaplan of the Los Angeles Superior Court appeals the district court's adverse judgment in his suit challenging the fees charged to candidates for political office by Los Angeles County for costs associated with the publication of election statements in the County's voter's pamphlet. Kaplan contends that the cost recovery system violates his First and Fourteenth Amendment

rights. Because we find no constitutional infirmity in the cost recovery system, we affirm the district court's judgment.

I.

The California Elections Code allows candidates for nonpartisan city or county offices to prepare a statement for publication in a voter's pamphlet put out by the local government agency. Cal.Elec.Code § 10012 (West Supp.1989). The pamphlet is mailed with a sample ballot to all registered voters prior to the election. The statements of judicial candidates must be "limited to a recitation of the candidate's own personal background and qualifications and shall not in any way make reference to other candidates for judicial office or to another candidate's qualifications, character, or activities." *Id.* § 10012.1. The Code provides for a procedure by which the public and the county clerks may examine the candidate's statement prior to publication and seek an injunction or writ of mandate to enforce appropriate emendation should the statement not meet these conditions. *Id.* § 10013.5.

To defray the cost of publishing the voter's pamphlet, "[t]he local agency may estimate the total cost of printing, handling, translating,[1] and mailing the candidate's statements . . . and may require each candidate filing a statement to pay in advance to the local agency his or her

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[1] Candidates can request that their statements be translated into Spanish. The candidate who asks for a translation pays an additional amount to cover translation costs.

estimated pro rata share as a condition of having his or her statement included in the voter's pamphlet." *Id.* § 10012. The amount paid by the candidate will be adjusted if necessary after the actual publication costs are known. The local agency neither profits from these payments nor uses them to finance the costs of the election itself. *See id.*

The statute provides that, if a determination is made that the candidate is indigent, he or she is not required to pay the costs in advance. *Id.* § 10012.3. To declare indigency, the candidate must file a statement of financial worth with the local agency. The statement form may inquire into the candidate's income, personal and real property holdings, and financial obligations. The candidate must release to the local agency his or her most recent federal income tax report. If the local agency deems the candidate indigent, the agency is obligated to print and mail the statement without charge. The agency may, however, bill the candidate his or her actual pro rata share of the cost after the election. *Id.*

In 1986, Kaplan, then sitting as a judge of the Municipal Court for the Los Angeles Judicial District, decided to run in a nonpartisan election for an open seat on the Los Angeles Superior Court. Los Angeles County had estimated that, for the 1986 election, the English-only voter's pamphlet publishing costs would amount to $52,000 for the June 3, 1986, primary election and $27,500 for the November 4, 1986, general election. Kaplan originally tendered $24,024.53 to the County to cover what he personally calculated to be the amount needed to finance his share of the publication costs for the primary election. The County Registrar refused this amount and would not

accept Kaplan's statement. On March 7, 1986, Kaplan resubmitted his statement along with a check for $52,000. Six days later he withdrew his statement and eventually received a full refund.

Kaplan filed this action in the district court also on March 7, 1986, seeking an injunction against enforcement of the County's requirement for advance payment of the publication costs and a declaratory judgment that it violated the First and Fourteenth Amendments. He sought a temporary restraining order and preliminary injunction pending trial, which were denied. Kaplan appealed the denial of the preliminary injunction to this court. We affirmed the denial of the preliminary injunction on March 27, 1986, stating that although Kaplan had demonstrated the existence of serious questions of law, neither the balance of hardships nor the possible injury to Kaplan justified the relief of a preliminary injunction. We noted that Kaplan had already tendered the $52,000, concluding that it was apparent that the cost was not a bar to his candidacy and that a renewed tender and a suit for refund would provide adequate relief if he prevailed.

Kaplan won in the primary election despite the absence of his statement in the voter's pamphlet. For the general election, he paid the prescribed advance cost of $27,500 and had his statement published. He then filed an amendment to his complaint for a declaratory judgment and a refund of the $27,500.

The case was submitted on stipulated facts with accompanying exhibits. The district court found no constitutional error in the cost recovery system and entered judgment for the County.

II.

Kaplan presents two issues on appeal: (1) whether the cost recovery system infringes on his First Amendment rights; and (2) whether the system violates equal protection by distinguishing between candidates on the basis of financial resources. We review *de novo* these purely legal questions, *United States v. McConney*, 728 F.2d 1195, 1201 (9th Cir.) (en banc), *cert. denied*, 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984), and consider each claim in turn.

A. *First Amendment*

The dimension of Kaplan's First Amendment claim is outlined by what he does not contend. Kaplan does not challenge the statute on traditional freedom of expression grounds. He does not allege content or viewpoint discrimination by the state, overbreadth, or outright suppression of a specific type of speech. He claims, instead, that the cost recovery system erects a barrier to the expression of protected speech in the limited public forum of the voter's pamphlet. Invoking strict scrutiny, he contends that the recovery system is unconstitutional because it fails to serve a compelling state interest in a narrowly drawn fashion. We agree that the voter's pamphlet constitutes a limited public forum but find that a lower level of scrutiny attaches to this classification and that the statute survives review.

There is no doubt that the candidates' statements are protected speech. Political speech lies at the core of the First Amendment's protections. "Discussion of public issues and debate on the qualifications of candidates are

integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression. . . ." *Buckley v. Valeo*, 724 U.S. 1, 14, 96 S.Ct. 612, 632, 46 L.Ed.2d 659 (1976) (per curiam); *see also Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S.Ct. 621, 625-26, 28 L.Ed.2d 35 (1971) ("[T]he constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."). The candidate's statement clearly occupies a privileged place in the domain of First Amendment protections.

The question then becomes whether access to expression of these statements in the voter's pamphlet can be restricted by the advance payment of costs. In recent years, the Supreme Court has developed the public forum doctrine to address First Amendment concerns in relation to public channels of communication. State ownership of the means or place of communication does not automatically entail unlimited public access. The "First Amendment does not guarantee access to property simply because it is owned or controlled by the government." *United States Postal Serv. v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 129, 101 S.Ct. 2676, 2685, 69 L.Ed.2d 517 (1981). The now-familiar forum doctrine provides for three categories of access according to the type of public property involved. The first category, the traditional public forum, consists of streets, sidewalks, and parks that, in Justice Roberts' frequently quoted words, "have immemorially been held in trust for the use of the public . . . for purposes of assembly communicating thoughts between citizens, and discussing public questions." *Hague v. Committee for Indus. Org.*, 307 U.S. 496, 515, 59 S.Ct. 954,

964, 83 L.Ed. 1423 (1939). Two levels of scrutiny apply to the traditional public forum. State restrictions based on content must pass a high level of review in which the restriction is shown "to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983); *see also Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 98-99, 92 S.Ct. 2286, 2291-92, 33 L.Ed.2d 212 (1972). Other restrictions not tied to content – namely, time, place, and manner restrictions – must be shown to serve a significant state interest in a narrowly tailored fashion, and to leave open ample alternative communication channels. *Perry*, 460 U.S. at 45, 103 S.Ct. at 954-55; *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 3068-69, 82 L.Ed.2d 221 (1984).

At the other end of the spectrum stands the nonpublic forum, that is, public property and channels of communication that are not by tradition or designation subject to use for public communication. *Perry*, 460 U.S. at 46, 103 S.Ct. at 955-56. The level of scrutiny for a nonpublic forum is considerably lighter than that for a public forum. The state may restrict expression in a nonpublic forum so "long as the restrictions are 'reasonable and [are] not an effort to suppress expression merely because public officials oppose the speaker's view.' " *Cornelius v. NAACP Legal Defense & Educ. Fund*, 473 U.S. 788, 800, 105 S.Ct. 3439, 3448, 87 L.Ed.2d 567 (1985) (quoting *Perry*, 460 U.S. at 46, 103 S.Ct. at 955).

Between the public and nonpublic forum is the limited or designated public forum. This forum arises "when the Government has intentionally designated a place or

means of communication as a public forum." *Id.* 473 U.S. at 800, 105 S.Ct. at 3447-48. A limited public forum is open not to the public as a whole but to a restricted class of users, *see Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981), or a restricted class of subject matter; *see City of Madison Joint School Dist. No. 8 v. Wisconsin Employment Relations Comm.*, 429 U.S. 167, 175 n. 8, 97 S.Ct. 421, 426 n. 8, 50 L.Ed.2d 376 (1976). The government is, of course, not required to create or indefinitely maintain a limited public forum. However, once the government creates the forum "it is bound by the same standards as apply in a traditional public forum. Reasonable time, place, and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest." *Perry*, 460 U.S. at 46, 103 S.Ct. at 955.

We agree with the holding of the California Court of Appeal in *Gebert v. Patterson*, 186 Cal.App.3d 868, 874, 231 Cal.Rptr. 150, 153 (1986), that the voter's pamphlet constitutes a limited public forum. California created the pamphlets for the specific purpose of allowing a limited class of speakers, the candidates, to address a particular class of topics, statements concerning the personal background and qualifications of the candidate. *See* Cal.Elec.Code § 10012.1 (West Supp.1989). The voter's pamphlet clearly falls into the category of a limited public forum.

California created this limited public forum to allow candidates for non-partisan public office to communicate their qualifications to the electorate. There is no contention that this statute limits access on the basis of content; consequently, strict scrutiny requiring a compelling state

interest is not involved. Here, the limitation is the requirement that a candidate advance his or her proportionate share of the costs of providing the forum. Restrictions that are content-neutral need meet only the lesser level of scrutiny prescribed in *Perry;* they must be shown to serve a significant state interest in a narrowly tailored fashion and leave open ample alternative channels of communication. *Perry,* 460 U.S. at 45, 103 S.Ct. at 954-55.

Kaplan contends that the charge for Kaplan's statement of $52,000 in the primary election and $27,500 in the general election is a cost restriction that is constitutionally prohibited. The district court found that the charge was a reasonable calculation of estimated costs of publication and distribution. That finding is clearly supported by the record. Thus, we are concerned with the establishment of a means of communication that is a limited public forum and with a division of the costs of providing that means of communication among those utilizing it.

Kaplan argues that *Cox v. New Hampshire,* 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) as interpreted by *Murdock v. Pennsylvania,* 319 U.S. 105, 116, 63 S.Ct. 870, 876, 87 L.Ed. 1292 (1943) allows only a nominal fee to gain access to a limited public forum. *Cox* approved a city-imposed fee of $300 for the use of public streets for a parade by the Jehovah's Witnesses that was a reasonable estimate of the costs of policing the function. The *Murdock* case involved a license fee for home solicitation, unrelated to costs, that the Jehovah's Witnesses contended was a restriction on First Amendment rights. The Court distinguished the license fee from the requirement

of a parade permit in *Cox*, noting that "the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors." This is not a statement that *only* nominal charges to defray expenses are constitutionally permissible, but rather noting the particular distinction between the facts in *Cox* and those in *Murdock*. We find nothing in *Cox* that requires that all charges for any public forum be limited to "nominal" charges. For example, certainly reasonable rental charges can be made as a condition for granting the use of a municipal auditorium to any group on a nondiscriminatory basis.

Kaplan also relies on the Eleventh Circuit case in *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515 (11th Cir.1985), *cert. denied*, 475 U.S. 1120, 106 S.Ct. 1637, 90 L.Ed.2d 183 (1986), where the court struck down a city ordinance that required persons wishing to use the public streets and parks for demonstrations to prepay the costs for additional police protection, the amount to be determined in the discretion of the chief of police.

The use of public streets and parks for public expression presents a distinct situation. First, they have been used "from time immemorial" as the "quintessential public forum." *Perry*, 460 U.S. at 45, 103 S.Ct. at 954-55. Keeping order in the streets and parks is generally a public responsibility to be carried by the public at large and there is difficulty in determining which costs are appropriately attributable to a special event and which are appropriately general public responsibility. There are also dangers in leaving the determination to the discretion of a single official, in that case the chief of police.

We need not determine whether we would agree with the Eleventh Circuit decision, under the circumstances of that case, because we are dealing here with an entirely different type of public forum – one created for the specific purpose of communication and one in which the costs of creating and utilizing that public forum are easily determined. These costs are proportionally allocated among those utilizing that public forum. In this circuit, we have recognized that it does not violate the First Amendment for a public entity to collect charges that fairly reflect costs incurred by the municipality in connection with an activity involving expression. *Baldwin v. Redwood City*, 540 F.2d 1360 (9th Cir.1976), *cert. denied sub nom. Leipzig v. Baldwin*, 431 U.S. 913, 97 S.Ct. 2173, 53 L.Ed.2d 223 (1977). In this case, the charges of providing the forum have been fairly allocated.

We find no violation of the First Amendment in this cost recovery system. The state's interest in publishing voter's pamphlets in a way that does not burden local agency budgets is a substantial interest. The statute is narrowly drawn in that the local agencies can recover actual costs alone, and cannot profit from the publication charges nor finance election costs with them. The statute exempts the indigent from cost liability and leaves open a variety of alternative means for a candidate to transmit his statement to voters. In light of these factors, we deem the cost recovery system constitutional under the First Amendment.

B. *Equal Protection*

Kaplan contends that the cost recovery system runs afoul of the Fourteenth Amendment's equal protection

clause. He characterizes the system as a state program that distinguishes among candidates on the basis of financial resources. He relies heavily on two ballot access cases, *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972), and *Lubin v. Panish*, 415 U.S. 709, 94 S.Ct. 1315, 39 L.Ed.2d 702 (1974), for the proposition that the equal protection clause bars distinctions based on financial resources in the electoral arena and that such distinctions will be strictly scrutinized by the courts. Although the ballot access cases cited by Kaplan do strike down certain election statutes that excluded candidates who could not pay the filing fee, these cases offer Kaplan no ground on which to stand.

The facts in *Bullock* and *Lubin* demonstrate why these cases are inapposite to Kaplan's equal protection claims. In *Bullock*, the Supreme Court confronted a Texas statutory scheme which required each candidate to "pay a filing fee as a condition to having his name placed on the ballot in a primary election." *Bullock*, 405 U.S. at 135, 92 S.Ct. at 852 (footnote omitted). The Court emphasized that the fee was "an absolute prerequisite to a candidate's participation in a primary election." *Id.* at 137, 92 S.Ct. at 852. A candidate would not appear on the ballot if the fee were not paid. The Texas system made no exception for candidates who could not afford the fee, even though "the candidates in this case affirmatively alleged that they were *unable*, not simply *unwilling*, to pay the assessed fees." *Id.* at 146, 92 S.Ct. at 857 (emphasis in original). It provided "no alternative procedure by which a potential candidate who is unable to pay the fee can get on the primary ballot," *id.* at 137, 92 S.Ct. at 852-53, and thereby "exclud[ed] some candidates otherwise qualified

[to run for office] and den[ied] an undetermined number of voters the opportunity to vote for candidates of their choice." *Id.* at 149, 92 S.Ct. at 859. The Court determined that the statute was patently exclusionary and therefore invalidated it as a violation of equal protection.

In *Lubin*, the Court examined a section of the California Elections Code that required all candidates, without exception, to pay a filing fee as a precondition to appearing on the ballot. Once again the Court emphasized that under the California law "the payment of a fee is an absolute, not an alternative, condition, and failure to meet it is a disqualification from running for office." *Lubin*, 415 U.S. at 718, 94 S.Ct. at 1321. Because the statute offered no alternatives to candidates unable to pay the fee, thereby excluding them from access to the ballot, the Court struck the statute as unconstitutional.

In this case, we do not encounter the concerns addressed in *Bullock* and *Lubin*. California's cost recovery system does not affect a candidate's access to the ballot or right to participate in an election. A candidate who does not place a statement in the voter's pamphlet, thereby entirely avoiding the cost recovery system, will still appear on the ballot. No candidate is excluded from being listed on the ballot by virtue of the cost recovery system. The County has provided one method for candidates to express their qualifications to the electorate, if they choose to do so and share the cost. If not, they can utilize other means of reaching the electorate in their election campaigns. Kaplan's reliance on *Bullock* and *Lubin*, consequently, is unavailing.

III.

We live in an age in which population growth and technological development have made even local political races into expensive undertakings. Inevitably, some candidates will possess greater financial resources than others and will enjoy greater access to the electorate. Although this may be unfair and unsatisfactory, we, as judges, cannot iron out electoral disparity resulting from differences in candidates' financial resources. *See Buckley v. Valeo*, 424 U.S. at 54, 96 S.Ct. at 651-52. The proper institution for consideration of electoral reform to alleviate the disparity is the legislature, not the judiciary. We find no legal or constitutional infirmity in the challenged statute and affirm the district court's decision.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEON S. KAPLAN Plaintiff, vs. COUNTY OF LOS ANGELES, Defendant.	CASE NO. 86-1461 DT(Jrx) FINDINGS OF FACT AND CONCLUSIONS OF LAW (Filed Nov. 4, 1987)

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

This action came on for trial in this court on the 14th day of October, 1987. Appearing on behalf of the parties were David Grosz, of Fleishman, Fisher & Moest, representing the plaintiff, and Philip H. Hickok, Principal Deputy County Counsel, for the defendant. Evidence was presented by way of stipualted [sic] facts, exhibits, and declarations. Having heard the arguments of counsel and reviewed the evidence submitted, the court finds the following:

FINDINGS OF FACT

1. The costs paid to Defendant, County of Los Angeles, under Elections Code Section 10012 are the actual costs incurred by the County for the publication of statements for nonpartisan candidates and provide no profit to defendant.

2. None of the funds paid as costs pursuant to Elections Code Section 10012 are used by the County of Los

Angeles to defray the costs of elections, as they are the actual costs of reimbursement for publication of nonpartisan candidate statements.

3. The costs recovered under Elections Code Section 10012 are costs to the nonpartisan candidates, not the taxpayers.

4. A nonpartisan candidate has the option to not request a candidate statement and thus not pay the costs specified under Elections Code Section 10012. There are other means available to the candidate to communicate his or her qualifications to the voters such as direct mail, television, and newspapers.

5. The method of determining the costs to be paid, the cost of printing each page times the number of eligible voters for that office, is reasonable in light of the number of voters reached and the cost of alternate means of campaign communication.

6. Elections Code Sections 10012 and 10012.5 were adopted with the express legislative intent that counties not be burdened with the costs of publishing a candidate's statement.

CONCLUSIONS OF LAW

1. Elections Code Section 10012 is not unreasonable, arbitrary, capricious, invidious or unrelated to a legitimate state interest;

2. Section 10012 was enacted to provide candidates with a reasonable means to communicate with voters and to provide voters with information regarding candidates' qualifications.

3. Sections 10012 and 10012.5 reflect a legitimate state interest of providing a candidate with the means to communicate with voters and to provide voters with information regarding candidates' qualifications.

4. The costs charged pursuant to Elections Code Section 10012 are not an abridgement of the First Amendment's freedom of speech protection:

a. They are not a filing fee.

b. They are rationally related to the cost of publishing and distributing the candidates' statements to the voters.

c. Defendant used a reasonable method for determining the estimated costs of publication to be charged to the candidates.

d. The sample ballot is not a public forum for free speech activities.

5. The appropriate review of Sections 10012 and 10012.5 is whether there is a rational basis for their provisions.

/s/ DICKRAN M. TEVRIZIAN, JR.
DICKRAN M. TEVRIZIAN, JR.

DATED: NOV 1987

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEON S. KAPLAN Plaintiff, vs. COUNTY OF LOS ANGELES, Defendant.	CASE NO. 86-1461 DT(Jrx) PROPOSED JUDGMENT (Filed Nov. 4, 1987)

THIS CONSTITUTES NOTICE OF ENTRY.
AS REQUIRED BY FRCP, RULE 77(d).

This action came on for trial before the Court, the Honorable Dickran M. Tevrizian, Jr., District Judge, presiding, and the issue having been duly tried and a decision, having been duly rendered,

It is Ordered and Adjudged

That Judgment enter in favor of the Defendant, and that the parties bear their own costs.

Dated at Los Angeles, California, this ___ day of October, 1987.

NOV 4 1987

/s/ DICKRAN TEVRIZIAN, JR.
Judge of the District Court

APPENDIX C

§ 10012. Candidate's statement

Each candidate for nonpartisan elective office in any local agency, including any city, county, city and county or district, may prepare a candidate's statement on an appropriate form provided by the clerk. The statement may include the name, age and occupation of the candidate and a brief description of no more than 200 words, of the candidate's education and qualifications expressed by the candidate himself or herself. However, * * * the governing body of the local agency may authorize an increase in the limitations on words for the statement from 200 to 400 words. The statement shall not include the party affiliation of the candidate, nor membership or activity in partisan political organizations. The statement shall be filed in the office of the clerk when his or her nomination papers are returned for filing, if it is for a primary election, or for an election for offices for which there is no primary. The statement shall be filed in the office of the clerk no later than the 88th day before the election, if it is for an election for which nomination papers are not required to be filed. If a runoff election or general election occurs within 88 days of the primary or first election, the statement shall be filed with the clerk by the third day following the governing body's declaration of the results from the primary or first election. Except as provided in Section 10012.3, the statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5 p.m. of the next working day after the close of the nomination period.

The clerk shall send to each voter together with the sample ballot, a voter's pamphlet which contains the written statements of each candidate that is prepared

pursuant to this section. The statement of each candidate shall be printed in type of uniform size and darkness, and with uniform spacing. The clerk shall provide a Spanish translation to those candidates who wish to have one, and shall select a person to provide that translation from the list of approved Spanish language translators and interpreters of the superior court of the county or from an institution accredited by the Western Association of Schools and Colleges.

The local agency may estimate the total cost of printing, handling, translating, and mailing the candidate's statements filed pursuant to this section, including costs incurred as a result of complying with the Voting Rights Act of 1965, as amended, and may require each candidate filing a statement to pay in advance to the local agency his or her estimated pro rata share as a condition of having his or her statement included in the voter's pamphlet. In the event of underpayment, the clerk may require the candidate to pay the balance of the cost incurred. In the event of overpayment, the clerk shall prorate the excess amount among the candidates and refund the excess amount paid within 30 days of the election.

Nothing in this section shall be deemed to make any such statement or the authors thereof free or exempt from any civil or criminal action or penalty because of any false, slanderous or libelous statements offered for printing or contained in the voter's pamphlet.

Before the nominating period opens, the local agency for that election shall determine whether a charge shall be

levied against that candidate for the candidate's statement sent to each voter. This decision shall not be revoked or modified after the seventh day prior to the opening of the nominating period. A written statement of the regulations with respect to charges for handling, packaging, and mailing shall be provided to each candidate or his or her representative at the time he or she picks up the nomination papers.

For purposes of this section, and Section 10012.5, the board of supervisors shall be deemed the governing body of judicial elections.